53D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { EX. DOC. No. 24.

ADDITIONAL APPROPRIATION FOR DEPARTMENT OF JUSTICE.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A copy of a communication from the Attorney-General submitting an additional estimate of appropriation for the use of the Department of Justice.

OCTOBER 27, 1893.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT, *October 26, 1893.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Attorney-General of the 24th instant, submitting additional estimates of appropriations for the following objects:

Fees and expenses in suits against Benjamin Weil and La Abra Mining Company	$10,000
Expenses of litigation in case of the United States against Thomas *et al.*, in the interest of the Eastern Band of Cherokee Indians, North Carolina	5,000
Contingent expenses, Department of Justice; transportation, 1894	1,000

Respectfully yours,

J. G. CARLISLE,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 24, 1893.

SIR: You are respectfully requested to forward to the Speaker of the House of Representatives the following deficiencies in appropriations made for this Department, to be considered as urgent, and for which appropriations are needed and requested at the present session of Congress.

(1) Fees and expenses in suits against Benjamin Weil and La Abra Mining Company, $10,000.

For expenses necessarily incurred, and to be incurred, in the prosecution of the suits directed by acts approved December 28, 1892, to be brought in the name of the United States against Benjamin Weil, or his legal representatives and assigns, and La Abra Mining Company, its successors and assigns, $10,000, which shall include all counsel fees, and shall be expended under the direction of the Attorney-General.

The estimate of $10,000 is made by the special counsel in the case, R. B. Lines, in a letter to the Department, copy of which is inclosed, presenting a history of the Weil and La Abra cases, and a statement as to the probable time and expenses that will be necessary to bring them to a conclusion.

The appropriation of $1,500 has to its credit about $160, the remainder of the appropriation having been paid in fees to special counsel, the other expenses being for printing certain advertisements in the Washington Post, of this city.

(2) Appropriation for defraying the expenses of litigation in the case of the United States against Thomas *et al.*, in the interest of the Eastern band of Cherokee Indians, North Carolina, $5,000.

The money heretofore appropriated is completely exhausted. There is at present payable a large bill for the expenses of the surveyor, who has threatened at times to abandon the work unless he can get compensation for his services, as well as for the expenses necessarily incurred by him in the discharge of his duties. As the work is continuous, and a large amount is already chargeable against the United States and properly payable, the appropriation is recommended as urgent, that the parties interested may be compensated promptly as the work goes on.

(3) Contingent expenses, Department of Justice, transportation, 1894. For official transportation, including purchase, keep, and shoeing of animals, and purchase and repairs of wagons and harness, $1,000.

The present appropriation of $500 will soon be exhausted. This item is made urgent because one of the horses is inefficient, is depreciating in value, and liable to be an actual loss; if sold now, $100 can be obtained for him, and another horse be bought for $200; and because the present carriage is not worth the constant repairs required to make it serviceable.

Very respectfully,

RICHARD OLNEY,
Attorney-General.

The SECRETARY OF THE TREASURY.

WASHINGTON, D. C., *October 17, 1893.*

SIR: In compliance with your instructions of the 14th instant I submit herewith a statement of the history and condition of the Weil and La Abra cases, the issues which they present, and the probable time and expense necessary to bring them to a conclusion.

The Weil claim was founded on the alleged seizure by Mexican soldiers of a large amount of cotton on the Mexican side of the Rio Grande between Laredo and Eagle Pass in the year 1864. La Abra claim was for the alleged expulsion of La Abra Mining Company from its mines in the mountains of Mexico, on the border between the States of Durango and Sinaloa (about 150 miles by mule trail from Mazatlan), in the year 1868.

In 1875 awards were rendered by the mixed commission of the United States and Mexico in favor of the claimants amounting to about $500,000 in the Weil case and $700,000 in La Abra. These awards were based upon the testimony of 28 witnesses in the Weil case and 59 witnesses in La Abra case.

Mexico moved for a rehearing in each case on the ground that the awards were wholly based on perjured evidence, supporting her motion in the Weil case by affidavits of 11 witnesses and documentary evidence alleged to consist of original papers of the claimant. Both motions were denied by the umpire, who stated that he had no authority to entertain them and referred the appeal of Mexico to the Government of the United States. Pending its consideration Mexico secured the "press copy book" and certain other documents of La Abra Company, identified by the affidavit of one of its superintendents, and submitted it to the United States in support of her appeal.

Congress took jurisdiction of the questions presented and, in an act passed June 18, 1878, providing generally for the distribution of the moneys paid and to be paid by Mexico in satisfaction of all the awards against her, requested the President to investigate the charges of fraud presented by Mexico with respect to these two claims, and authorized him (if, in his opinion, the honor of the United States, the principles of public law, or considerations of justice and equity required that the awards should be opened and the cases retried) to withhold payment of the awards until the cases should be retried and decided in such manner as the United States and Mexico might agree, or until Congress should otherwise direct.

In May, 1879, Mr. Evarts, Secretary of State, heard argument, lasting five days, on behalf of Mexico and the claimants, and in August, 1879, he reported to the President his conclusions—that neither the principles of public law nor considerations of justice and equity required or permitted a retrial of the claims before a new commission with Mexico as a party, but that the honor of the United States did require an investigation by a domestic tribunal under authority of Congress. In La Abra case, he said, this investigation should extend only to the question of the measure of damages, and in a later report, made in September, he recommended the payment to La Abra Company of the amount then in hand applicable to the award in its favor (about $140,000), which was made. Upon this point Mexico asked for a review of the Secretary's decision.

The two reports of Mr. Evarts, with some additional observations in support of his decision against a retrial before a new international commission, were transmitted to the Senate in May, 1880, in reply to a resolution of that body passed in February. In this communication Mr. Evarts announced that, if Congress should adjourn without providing for a judicial investigation of the cases, it would be the duty of the Executive to pay over the money then in hand to the claimants in both cases.

Congress adjourned in June, 1880, without making such provision. The Mexican legation then instructed counsel to prepare bills in equity to be filed in the United States courts against the claimants with Mexico as complainant. To this course Secretary Evarts entered a diplomatic objection and the bills were not filed. The distribution of the money was then proceeded with until some $500,000 had been paid out on both cases.

Secretary Frelinghuysen suspended payment and negotiated a treaty with Mexico for the retrial of the cases, which failed of ratification in the Senate by one vote. Pending its consideration, and also after its defeat, the claimants applied for writs of mandamus to compel payment of the moneys, but the writs were denied. These suits settled the right of the Government, in its political capacity, to control the fund held to meet the awards.

After a long period of inaction an investigation was undertaken in 1888 by the Senate Committee on Foreign Relations. In La Abra case a hearing was had extending over several months, and fifteen witnesses were examined. The testimony covers over 900 printed pages. Strong reports were made by this Committee and afterward by the Foreign Affairs committee in the House denouncing both claims as frauds, and these reports resulted in the passage of the acts of December, 1892, directing the bringing of suits in the Court of Claims against the claimants in the name of the United States.

Although these acts passed both Houses some days before their adjournment for the holidays, they were not presented to the President until after such adjournment, and the question was immediately raised whether he could constitutionally approve them, inasmuch as the adjournment was for more than ten days. An opinion adverse to the right of approval was prepared in the Department of Justice, and was about to be signed by your predecessor, Mr. Miller, but upon some authority in favor of such right being shown him he suppressed the opinion and recommended the President to sign the acts, leaving the question to be determined in the courts. It has now been raised, with other questions, by the demurrers to the bills filed by several of the defendants.

I need not suggest to you the importance of this constitutional question (which has never been passed upon). A decision in favor of the validity of these acts would establish the right of the President to approve a bill within ten days after the close of any session of Congress. It would do away with the necessity of the session of the Cabinet at the Capitol on the last day of the session, and would enable the President and his officers to carefully examine all bills, as they can not do under existing conditions.

The acts of 1892 failed to make any appropriations to carry out their instructions, the committees doubtless supposing the regular appropriations for your Department to be available for the purpose. It was found, however, that as to suits in the Court of Claims, the general appropriations were for the "defense," and not the prosecution of suits. Moreover, as the regular officers of your Department were constantly engaged with its ordinary business, it was thought that the suits would be speeded by engaging counsel specially familiar with them, and for this reason,

having been in the cases sixteen years, I was appointed a special assistant to your predecessor. Mr. Miller, however, limited my employment to the preparation of the bills, not wishing, as he said, to embarrass his successor in the choice of counsel. He also said that he would ask for an appropriation sufficient only to start the suits, leaving it to the next Congress to provide for their continuance. Congress appropriated $1,500, limiting it, however, to the Weil case.

The preparation of the bills occupied about two months, and they were signed by you and filed in March last. You approved my bill for $750, which was paid, and my functions expired. I, however, assisted Mr. Cotton in the preparation of the special rules of court provided for in the statutes, which, however, were not promulgated for several months, thus delaying the appearance of defendants. On my reappointment by you on the 1st of July, I attended to the service of subpœnas and to the publication against absent defendants, and have since given all necessary attention to speeding the causes, without compensation.

I inclose herewith slips showing the names of the defendants, 35 in the Weil case and 22 in La Abra case. Almost all of these came into the cases by the assignment to them of contingent interests in the claims or awards, generally as counsel fees for representing the claimants before the commission, the Department of State, the Senate, the House of Representatives, and the courts. Some came in before and some after the $500,000 was paid over. Among them you will recognize the names of excabinet officers, judges on the bench, and others eminent at the bar. In addition to those named as defendants, I am informed that there are outstanding assignments in favor of other persons, but as I could not find such assignments on file in the Department of State I could not, when the bills were drawn, make the assignees defendants, and could only ask discovery of their names from the others. I have met most of the lawyer defendants in one or the other of the many arguments which have been had in these cases, and have found them as well equipped mentally for the struggle as they were pecuniarily after the $500,000 was paid over by Mr. Evarts.

Some of the defendants have appeared in proper person, others by able counsel not named as defendants. In each case demurrers have been filed raising constitutional points—the one above referred to touching the signature of the statutes and the further point that the questions involved are not judicial but political, and there is no "case" at law or in equity before the court. On this point much doubt was expressed in the Senate when the acts of 1892 were under discussion, many Senators contending that the cases could not be appealed to the Supreme Court, as provided in the acts.

In addition to these jurisdictional questions that of the rights of assignees for value and without notice is raised; and in both cases answers have been filed denying the facts alleged in the bills. Applications to extend the time for pleading have been made by several defendants.

Under a rule of court, evidence may be taken at any time in either case, unless all the defendants in such case elect to stand on demurrer or plea. Whether this can be enforced may be questioned, but it is of the utmost importance to the success of the suits that the evidence should be taken at the earliest possible day. The possibility of the death of witnesses to transactions alleged to have occurred twenty-five or thirty years ago is a constant menace.

In the Weil case the witnesses for the Government reside mainly in Louisiana, Mississippi, and Texas. In La Abra case testimony may have to be taken in New York, California, and perhaps at the site of the mines in the mountains of Mexico. This would be better done, probably, on oral examination by a person already familiar with the cases than on interrogatories. But, however it may be done, the expense must be considerable. Including traveling expenses, witnesses', commissioners', and stenographers' fees, together with such reasonable counsel fees as you, in view of the importance of the suits, the work involved, and the practice of the Government in similar cases, might determine, I should say that $10,000 would be a small estimate. That is not quite 1½ per cent of the sum at stake ($700,000). Of course the United States has no money interest in the suits, but the defendants have, and will fight earnestly to protect it, as they have done hitherto.

If funds were now available to proceed with the suits I believe they could be tried at the present term of the Court of Claims, and the appeals, if taken, advanced in the Supreme Court to be disposed of before the end of 1894. This would be my aim if my connection with the cases should continue.

I have the honor to be, very respectfully, yours,

ROBERT B. LINES.

Hon. RICHARD OLNEY,
Attorney-General.

Subpœna to answer original bill.

The United States *vs.* Alice Weil, widow in community of Benjamin Weil, deceased; George Weil, John B. Vinet, public administrator of the parish of Orleans, State of Louisiana, administering the estate which was of Benjamin Weil, deceased; Caroline Cain and Adolph Marks, executors of the last will and testament of Lambert B. Cain, deceased; Elizabeth C. Hays, widow in community of Harry T. Hays, deceased; Elizabeth C. Hays, tutrix of John Hays, Lucy Hays, Kate Hays, and Minerva Hays, minors; John Hays, Lucy Hays, Kate Hays, and Minerva Hays, minors; Marie Emma Braughn, widow in community of George H. Braughn, deceased; George Horace Braughn; Marie Louise Braughn; Julia Anna Braughn; Marie Emma Braughn, tutrix of Marguerite Braughn, James Dudley Braughn, Florence Bertha Braughn, Corinne Virginia Braughn, and Marie Lucie Braughn, minor children and heirs of George H. Braughn, deceased, and as such administratrix of the estate which was of said George H. Braughn, deceased; Marguerite Braughn, James Dudley Braughn, Florence Bertha Braughn, Corinne Virginia Braughn, and Marie Lucie Braughn, minors; Charles F. Buck; Max Dinkelspiel; William O. Hart; Charles F. Buck, Max Dinkelspiel, and William O. Hart, trading under the name and firm of Buck, Dinkelspiel & Hart; Hettie Ann Key, executrix of the last will and testament of John J. Key, deceased; Henry E. Davis, administrator *de bonis non* of the estate which was of Philip B. Fouke, deceased; Lucy Warden; Charles G. Warden; Sanders W. Johnston; Jacob O. De Castro; John Nicholson; George S. Boutwell; Sylvanus C. Boynton; and John W. Burke, executor of the last will and testament of William W. Boyce, deceased, defendants.

Subpœna to answer original bill.

The United States *vs.* La Abra Silver Mining Company; George Ticknor Curtis; John H. Rice; Eugene Jones; Sumner Stow Ely; Cyrus C. Camp, executor of the last will and testament of Herman Camp, deceased; Ellen V. Camp; The American Security and Trust Company, administrator with the will annexed of the estate which was of Samuel C. Pomeroy, deceased; Edward S. Hamlin, administrator with the will annexed of the estate which was of Thomas W. Bartley, deceased; Samuel Shellabarger; Jeremiah M. Wilson; Katie L. Hatch; Charles T. Parry; Joseph Hopkinson; Sterling B. Toney; Henry S. Foote, executor of the last will and testament of Henry S. Foote, deceased; Frederick P. Stanton; Daniel M. Adams, executor of the last will and testament of Alonzo W. Adams, deceased; John W. Burke, administrator of the estate which was of William W. Boyce, deceased; Edward M. Harrington, Crammond Kennedy, and George H. Williams, defendants.